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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,099	12/13/2001	Jeffery W. Segars	19133.0016U2	6494
7590	01/12/2004		EXAMINER	
NEEDLE & ROSENBERG, P.C. The Candler Building, Suite 1200 127 Peachtree Street, N.E. Atlanta, GA 30303-1811			NERBUN, PETER P	
			ART UNIT	PAPER NUMBER
			3765	15
DATE MAILED: 01/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/017,099	SEGARS ET AL.
	Examiner	Art Unit
	Peter P Nerbun	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
 - 4a) Of the above claim(s) 1-18 and 46-48 is/are withdrawn from consideration.
- 5) Claim(s) 19-45 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6,9,10,12</u> . | 6) <input type="checkbox"/> Other: _____ . |

Applicant's election with traverse of the restriction requirement in Paper No. 14 is acknowledged. The traversal is on the ground(s) that the examiner has not met the burden of demonstrating that a serious burden would be required to examine all the claims. This is not found persuasive because MPEP 803 explicitly states that "for purposes of the initial requirement, a serious burden on the examiner may be *prima facie shown*" if the examiner provides "an appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.". The examiner has provided an appropriate explanation of separate classification for the distinct inventions that are set forth in Group I and Group II of the restriction requirement (paper no. 11). Applicant further states that "the groups are both classified in class 112". Separate classification is shown by classification in a different class AND subclass (*emphasis added*). In the instant application Group I is classified in class 112, subclass 475.23 while Group II is classified in Class 112, subclass 80.23. Finally applicant states that "because little or no additional burden would be required to search and examine the groups together, the Applicants respectfully submit that the Examiner should search and examine the groups together". The examiner views this statement as a mere conclusion rather than the "showings or evidence" required by MPEP 803 to rebut the *prima facie showing*.

The requirement is still deemed proper and is therefore made FINAL.

This application is in condition for allowance except for the presence of claims 1-18 and 46-48 to an invention non-elected with traverse in Paper No. 14. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever

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is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144).

Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

The following is an examiner's statement of reasons for allowance:

Claims 19, 40, 44 and their dependent claims are allowed because claims 19, 40, and 44 each specifically requires a weft yarn marker disposed on a backing material, the marker being substantially parallel to weft yarns of the backing material, a controller operably coupled to a detection device positioned with respect to a needle bar, and a bow roll passed about the backing material.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Peter Nerbun
January 6, 2004


Peter Nerbun
Primary Examiner